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Z-01-25

**AN ORDINANCE:
BY ZONING COMMITTEE**

AN ORDINANCE TO AMEND ORDINANCE Z-96-70, ADOPTED BY THE CITY COUNCIL ON AUGUST 4, 1997 AND APPROVED BY THE MAYOR ON AUGUST 5, 1997 APPROVING A REVISED SITE PLAN FOR PROPERTY LOCATED AT THE REAR OF 3500 PEACHTREE ROAD, N.E. FOR THE PURPOSE OF APPROVING A REVISED SITE PLAN.

OWNER: 100 PARK AVENUE PARTNERS, L.P.

APPLICANT: LARRY M. DINGLE, ESQ.

NPU B COUNCIL DISTRICT 7

WHEREAS, Ordinance 99-O-1581 (Z-96-70) was previously considered by the City Council and the request for approval of the revised site plan was adversed by Role Call vote on December 6, 1999; and

WHEREAS pursuant to the attached order of the Superior Court of Fulton County, dated March 7, 2001, a copy of which is hereby attached as Exhibit A, remanding the case for consideration of modifications and/or conditions or development of another site plan that allows for a use consistent with the Court's order;

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS:

SECTION 1: That the previously approved site plan governing the development of the property at the Rear of 3500 Peachtree Road, N.E. more particularly described by the attached legal description identified as Exhibit B is hereby deleted in its entirety and a revised site plan entitled "100 Park Avenue Zoning Site Plan" prepared by Burt Hill Kosar Rittleman Associates, dated August 16, 1999, and marked received by the Bureau of Planning on August 17, 1999, as presented in 99-O-1581 (Z-96-70), a copy of which is attached, is hereby adopted in lieu thereof.

SECTION 2: That all other previously approved conditions governing the development of the property shall remain in full force and effect. A copy of ordinance 97-O-0146 (Z-96-70/Z-94-19) and 99-O-1581 (Z-96-70) including said conditions is hereby attached for reference and identified as Exhibit C.

SECTION 3: That all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

100 PARK AVENUE PARTNERS, L.P.,

Plaintiff,

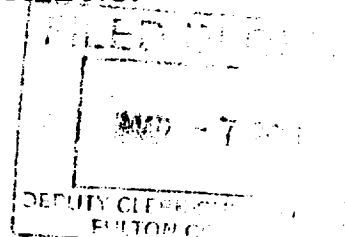
v.

CITY OF ATLANTA, et al.,

Defendants.

CIVIL ACTION FILE NO.

2000CV17819



ORDER REMANDING CASE

This Court having considered the letter briefs of the parties, it is the considered opinion of this Court that this matter should be remanded to the City of Atlanta or its designated authority for the purpose of determining the applicable site plan or any conditions relating to the property which is the subject matter of this action.

Here, the Plaintiff is asking this Court for an advisory opinion the purpose of which is "to provide the City with guidance as what will be unreasonable or unconstitutional." This is not the function of the Superior Court of Fulton County.

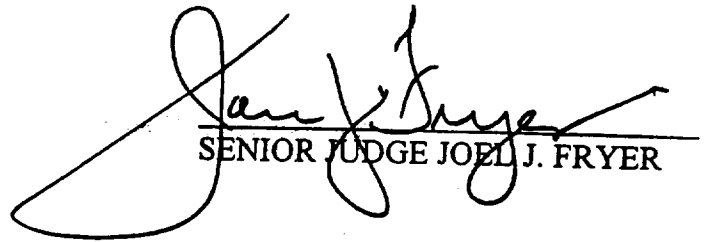
The City has agreed that the site plan as currently configured in relation to the subject property is unconstitutional and the case should be remanded so that the City can either accept the Plaintiff's proposal with modifications and/or conditions or develop another site plan that allows for a constitutional use. Once that has transpired there may be an appeal to this Court for further ruling.

It is therefore ordered that this above-styled action be **REMANDED**.

EXHIBIT A 1 of 2

CIVIL ACTION FILE NO. 2000CV17819

SO ORDERED, this the 7 day of March, 2001.


SENIOR JUDGE JOEL J. FRYER

cc:

David D. Blum, Esq.
City of Atlanta, Department of Law
Suite 4100
City Hall Tower
68 Mitchell Street, SW
Atlanta, Georgia 30335-0332

Dick Wilson, Jr., Esq.
Wilson, Brock & Irby, LLC
Overlook I, Suite 700
2849 Paces Ferry Road
Atlanta, Georgia 30339

LEGAL DESCRIPTION

RESIDENTIAL TRACT (BOTH PHASES)

All that tract or parcel of land lying in the City of Atlanta and being a portion of Land Lot 44 of the 17th District of Fulton County, Georgia and being more particularly described as follows:

To find the POINT OF BEGINNING, commence at a right-of-way located at the intersection of the southwesterly right-of-way of Peachtree Road (right-of-way is mitered at this point) and the northwesterly right-of-way of Peachtree Road (right-of-way width varies at this point) and thence run North 07 degrees 19 minutes 44 seconds East along the miter of the right-of-way of Wieuca Road with Peachtree Road for a distance of 109.92 feet to a point;

Thence along the southwesterly right-of-way of Wieuca Road (right-of-way width varies), run North 28 degrees 16 minutes 50 seconds West for a distance of 372.17 feet to a point;

Thence along the southwesterly right-of-way of Wieuca Road (right-of-way width varies), run North 28 degrees 16 minutes 50 seconds West for a distance of 11.61 feet to a point;

Thence along the southwesterly right-of-way of Wieuca Road (right-of-way width varies), run North 00 degrees 31 minutes 49 seconds East for a distance of 22.83 feet to a point;

Thence along the southwesterly right-of-way of Wieuca Road (right-of-way width varies), run North 28 degrees 16 minutes 50 seconds West for a distance of 121.11 feet to a point on the southwesterly right-of-way of Phipps Boulevard;

Thence along the southwesterly right-of-way of Phipps Boulevard (right-of-way width varies), run along a curve to the left having a radius of 339.47 feet and an arc length of 214.01 feet, being subtended by a chord of North 46 degrees 20 minutes 26 seconds West for a distance of 210.48 feet to a point, said point being the POINT OF BEGINNING;

Thence, from said POINT OF BEGINNING thus established and leaving said right-of-way, run South 34 degrees 37 minutes 07 seconds West for a distance of 326.48 feet to a point;

Thence run South 64 degrees 54 minutes 38 seconds West for a distance of 101.68 feet to a point;

Thence run South 64 degrees 54 minutes 38 seconds West for a distance of 290.48 feet to a point;

Thence run North 51 degrees 36 minutes 28 seconds West for a distance of 98.92 feet to a point;

Thence run North 51 degrees 36 minutes 28 seconds West for a distance of 86.14 feet to a point on the southerly right-of-way of Phipps Boulevard;

Thence, along the southerly right-of-way of Phipps Boulevard, run North 58 degrees 26 minutes 00 seconds West for a distance of 95.07 feet to a point;

Thence, along the southerly right-of-way of Phipps Boulevard, run along a curve to the right having a radius of 478.37 feet and an arc length of 71.55 feet, being subtended by a chord of North 42 degrees 07 minutes 10 seconds East for a distance of 71.48 feet to a point;

Thence, along the southerly right-of-way of Phipps Boulevard, run North 46 degrees 24 minutes 15 seconds East for a distance of 40.95 feet to a point;

Thence, along the southerly right-of-way of Phipps Boulevard, run along a curve to the right having a radius of 806.33 feet and an arc length of 248.18 feet, being subtended by a chord of North 55 degrees 13 minutes 19 seconds East for a distance of 247.20 feet to a point;

Thence along the southerly right-of-way of Phipps Boulevard (right-of-way width varies), run along a curve to the right having a radius of 806.33 feet and an arc length of 321.16 feet, being subtended by a chord of North 75 degrees 27 minutes 00 seconds East for a distance of 319.05 feet to a point;

Thence along the southerly right-of-way of Phipps Boulevard (right-of-way width varies), run North 86 degrees 51 minutes 38 seconds East for a distance of 11.58 feet to a point;

Thence along the southerly right-of-way of Phipps Boulevard (right-of-way width varies), run along a curve to the right having a radius of 339.47 feet and an arc length of 170.27 feet, being subtended by a chord of South 78 degrees 46 minutes 13 seconds East for a distance of 168.49 feet to the POINT OF BEGINNING.

Said tract or parcel of land contains 4.4454 acres.

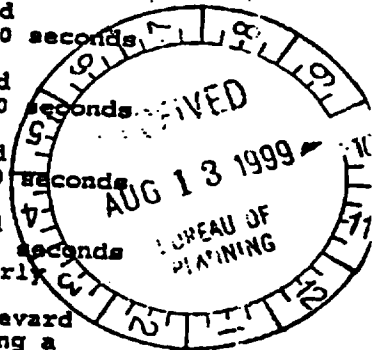


EXHIBIT B